

Message Text

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PAGE 01 STATE 129436

62

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TO USMISSION OECD PARIS PRIORITY

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TAGS: EFIN, EINV, OECD

SUBJECT: CIME DRAFTING GROUP ON MNE'S

REF: IME/WP/75.1

1. SUMMARY: WE ARE DISAPPOINTED AND CONCERNED AT TENOR OF SECRETARIAT DOCUMENT IME/WP/75.1 PREPARED FOR JUNE 10-11 DRAFTING GROUP MTG. ON SEVERAL KEY POINTS SECRETARIAT APPEARS TO HAVE NEITHER REFLECTED PREPONDERANCE OF VIEWS IN CIME NOR ATTEMPTED TO BRIDGE CLEAR DIFFERENCES, BUT RATHER TO PRESS ITS OWN VIEW OF PROPER OUTCOME OF THIS EXERCISE. SOME OF THESE POINTS -- CONCEPT OF THE MNC, NONDISCRIMINATION VIS-A-VIS DOMESTIC AND MULTINATIONAL FIRMS, BALANCE OF GOVERNMENTAL AND ENTERPRISE OBLIGATIONS ARE CRUCIAL TO PROSPECTS FOR EVENTUAL U.S. DECISION ON

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PAGE 02 STATE 129436

CODE, AS SECRETARIAT SHOULD BE AWARE. WE ARE REQUESTING

MISSION TO MAKE OUR CONCERNS KNOWN AT HIGH LEVEL OF SECRETARIAT IN ADVANCE OF NEXT SESSION OF THE DRAFTING GROUP. END SUMMARY.

2. WE HAVE BEEN CONCERNED FOR SOMETIME AT THE INDEPENDENT LINE TAKEN BY SECRETARIAT OFFICIALS IN OPPOSITION TO U.S. VIEWS ON VARIOUS POINTS OF SUBSTANCE IN THIS EXERCISE WHICH HAS BEEN APPARENT BOTH IN THE DRAFTING GROUP AND THE CIME. HOWEVER, IN RECOGNITION OF THE DESIRABILITY OF HAVING A MEANINGFUL SUBSTANTIVE CONTRIBUTION FROM THE SECRETARIAT AND IN THE INTEREST OF SMOOTH RELATIONS WITH THESE OFFICIALS, WE HAVE NOT TAKEN ANY EXCEPTION TO THIS BEHAVIOR. WE ARE VERY CONCERNED ABOUT THE LATEST SECRETARIAT WORKING PAPER, HOWEVER, BECAUSE OF THE STUBBORNNESS WITH WHICH THE SECRETARIAT PRESSES ITS OWN POSITION ON THE MERITS -- AS OPPOSED TO ATTEMPTING TO FORMULATE LANGUAGE WHICH WILL BRIDGE DIFFERENCES -- AND BECAUSE WE SEE A DANGEROUS POSSIBILITY THAT THE WORKING GROUP DISCUSSION MIGHT DEVELOP INTO SOMETHING LIKE A BILATERAL NEGOTIATION BETWEEN THE SECRETARIAT AND THE USDEL. IN THE WORKING PAPER THE SECRETARIAT EITHER IGNORES AND IN SOME CASES OBJECTS TO CONCEPTS WHICH WERE EITHER DECIDED ON BY OR RECEIVED CONSIDERABLE SUPPORT IN THE CIME.

3. CLEAREST EXAMPLE IS THE DISCUSSION IN PARA. 13 OF THE WORKING PAPER. IT IGNORES THE STRONG CONSENSUS IN THE CIME THAT SOME APPROPRIATE REFERENCE TO GOVERNMENT RESPONSIBILITIES, ALONG THE LINES OF THE U.S. DRAFT, SHOULD BE INCLUDED IN THE CODE AND THE ABSENCE OF OPPOSITION IN THE CIME TO THE U.S. PROPOSITION THAT THIS LANGUAGE NOT BE MERGED INTO THE PREAMBLE. BY INTIMATING THAT THE SUBSTANCE OF THE U.S. PROPOSAL IN PARA. 12 ON GOVERNMENT OBLIGATIONS IS NOT NECESSARY, THE SECRETARIAT SHOULD, BY NOW, BE AWARE THAT IT IS IGNORING A POINT OF CRUCIAL IMPORTANCE TO THE U.S.

4. PARA. 7 OF WORKING PAPER TAKES A POSITION OBJECTING TO THE VIEWS EXPRESSED BY A NUMBER OF DELS AT THE CIME THAT THE GUIDELINES SHOULD BE APPLICABLE TO NATIONAL LIMITED OFFICIAL USE

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PAGE 03 STATE 129436

ENTERPRISES ON MATTERS WHERE THE SAME TREATMENT IS WARRANTED. THIS PRINCIPLE OF NONDISCRIMINATION RECEIVED SUPPORT FROM THE U.S., SWITZERLAND, JAPAN, AND GERMANY, AMONG OTHERS. SEVERAL DELS INDICATED THAT THIS PRINCIPLE IS VERY IMPORTANT TO THEIR PROSPECTS FOR ACCEPTANCE OF ANY GUIDELINES. IT WAS OPPOSED BY NO ONE -- ALTHOUGH UK AND SWEDEN VIEWED SOME PROVISIONS AS BEING ADDRESSED EXCLUSIVELY TO MNC'S.

5. THE U.S., WITH SOME SUPPORT FROM OTHER DELS, HAS ALSO MADE IT CLEAR THAT WE CANNOT ACCEPT THE NARROW CONCEPT OF AN ENTERPRISE, FOR THE PURPOSES OF THE CODE, AS A SINGLE UNIT DIRECTED FROM SOME CENTER -- A CONCEPT THAT WOULD MAKE THE CODE APPLICABLE TO PERHAPS A DOZEN OR SO LARGE FIRMS. THE CODE SHOULD APPLY TO FIRMS HAVING VARIOUS DEGREES OF TRANSNATIONAL TIES OR ASSOCIATION. NEVERTHELESS, IN PARAS. 6, 11(G) AND 14, THE SECRETARIAT ADOPTS A VERY NARROW DEFINITION OF MNC'S WHICH WOULD APPEAR TO MAKE THE CODE APPLY ONLY TO PARENT FIRMS WHICH "DIRECT" AFFILIATES.

6. ANOTHER EXAMPLE IS THE FAILURE IN PARA. 35 TO REFLECT THE CRITICAL DISCUSSION IN THE CIME OF THE WORKING PAPER DRAFT ON EMPLOYMENT AND INDUSTRIAL RELATIONS. THERE WAS STRONG OPPOSITION BY A NUMBER OF DELS TO INCLUDING ANYTHING ON THE LINES OF PARA. 8 AND SEVERAL OBJECTIONS TO PARA. 4.

7. WE BELIEVE IT IS NOW NECESSARY TO TAKE STEPS TO ADVISE THE SECRETARIAT THAT WE ARE NOT HAPPY WITH THE WAY IT IS APPROACHING THIS EXERCISE BUT WE WISH TO DO SO IN A MANNER MOST CONDUCTIVE TO FACILITATING THE SMOOTH FUNCTIONING OF THE DRAFTING GROUP. WHILE WE ARE PREPARED TO ARGUE EACH POINT ON ITS MERITS IN THE DRAFTING GROUP, WE FEAR THAT A GENERAL COMMENT ON THE INADEQUACIES OF THE SECRETARIAT DRAFT IN THAT FORUM WOULD MAKE IT DIFFICULT TO WORK WITH THE SECRETARIAT OFFICIALS CONCERNED AND MIGHT NOT BE EFFECTIVE AS SOME OTHER DELS WHO SHARE THE SECRETARIAT PERSPECTIVE COULD BE EXPECTED TO TAKE ISSUE WITH THE U.S. INTERVENTION. ACCORDINGLY, THE MISSION IS REQUESTED TO RAISE OUR CONCERNS AT AN LIMITED OFFICIAL USE

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PAGE 04 STATE 129436

APPROPRIATELY HIGH LEVEL OF THE SECRETARIAT IN ADVANCE OF THE NEXT DRAFTING GROUP MTG. YOU SHOULD MAKE THE FOLLOWING POINTS:

A. THE USG APPRECIATES THE EFFORTS THE SECRETARIAT IS MAKING IN SUPPORT OF THE WORK OF THE DRAFTING GROUP ON GUIDELINES FOR MNE'S. HOWEVER, WE ARE CONCERNED AT AN INCREASING TENDENCY OF THE SECRETARIAT TO PUSH ITS OWN POINT OF VIEW EVEN WHEN IT IS NOT ACCEPTED BY MANY MEMBER DELS.

B. THE USG IS PARTICULARLY CONCERNED IN THIS REGARD ABOUT THE PAPER (IME/WP/75.1) PREPARED FOR THE JUNE 10-11 MTG OF THE DRAFTING GROUP WHICH WE FEAR WILL MAKE

IT MORE DIFFICULT TO REACH EARLY AGREEMENT ON A SET OF PRINCIPLES OF CONDUCT. (YOU MAY DRAW ON PARAS. 3-6 ABOVE TO ILLUSTRATE WHY.)

C. WE EXPECT THAT IN THE FUTURE THE SECRETARIAT WOULD PLACE MORE EMPHASIS ON THE TASK OF HELPING THE MEMBER DELEGATIONS FIND COMMON GROUND. BOTH THE DRAFTING GROUP AND THE SECRETARIAT SHOULD ACCEPT THE GUIDANCE OF THE CIME AND SHOULD ENDEAVOR TO COME UP WITH FORMULAS THAT ARE WIDELY ACCEPTABLE.

D. THERE ARE CERTAIN ELEMENTS THAT ARE ESSENTIAL IF AN AGREEMENT IS TO BE OBTAINED ON A SET OF PRINCIPLES. FOR SOME, THIS INVOLVES INCLUDING SUBSTANTIAL TEXTS ON RESTRICTIVE BUSINESS PRACTICES, DISCLOSURE OF INFORMATION AND EMPLOYMENT. FOR US, IT IS ESSENTIAL THAT THE PRINCIPLES HAVE BALANCING ELEMENTS OF GOVERNMENT RESPONSIBILITY, THAT THEY TAKE INTO ACCOUNT THE INTERESTS OF THE OECD MEMBERS IN THE U.N. CONTEXT, AND THAT THEY NOT DISCRIMINATE AGAINST MNE'S OR INTERFERE WITH THE EFFECTIVE PERFORMANCE OF THEIR ECONOMIC ROLE. INGERSOLL

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